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No. 02-1624

Supreme Court, U.S.
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In The
Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

MICHAEL A. NEWDOW, *et al.*,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF REV. DR. BETTY JANE BAILEY, REV. DR. J. MARTIN BAILEY, RABBI LEONARD I. BEERMAN, REV. TERRY N. CANTRELL, REV. DR. HARVEY COX, REV. DR. ROBIN CRAWFORD, RABBI DAN FINK, PASTOR RICHARD LEE FINN, REV. DR. RONALD B. FLOWERS, REV. ROBERT FORSBERG, REV. DR. C. WELTON GADDY, REV. DR. DAVID M. GRAYBEAL, PASTOR ROBERT WAYNE HAYWARD, REV. JOAN HUFF, RABBI STEVEN B. JACOBS, PASTOR KEVIN JAMES, REV. NEAL MATSON, PASTOR MARVIN MOORE, REV. DR. BRUCE A. PEHRSON, REV. DR. ALBERT M. PENNYBACKER, REV. ALICE DE V. PERRY, REV. BRENDA BARTELLA PETERSON, REV. DR. BRUCE PRESCOTT, REV. KATHERINE HANCOCK RAGSDALE, REV. DR. GEORGE F. REGAS, REV. DR. DUKE ROBINSON, REV. DR. GEORGE RUPP, REV. DR. PAUL D. SIMMONS, REV. JERALD M. STINSON, REV. DEBORAH STREETER, PASTOR SAMUEL THOMAS, JR., REV. CHARLES WHITE, AND THE UNITARIAN UNIVERSALIST ASSOCIATION AS AMICI CURIAE SUPPORTING RESPONDENT MICHAEL A. NEWDOW

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MOTION FOR LEAVE TO FILE BRIEF OF THIRTY-TWO NAMED CHRISTIAN AND JEWISH CLERGY AND OF THE UNITARIAN UNIVERSALIST ASSOCIATION AS AMICI CURIAE IN SUPPORT OF RESPONDENT MICHAEL A. NEWDOW

Thirty-two named Christian and Jewish clergy, together with the Unitarian Universalist Association, a religious organization with more than one thousand congregations, move for leave to file a brief amicus curiae in support of Respondent Michael A. Newdow. Copies of the proposed brief are submitted with this motion.

The United States has consented to the filing of this brief. Respondent Michael A. Newdow has consented to the filing of this brief. Their consent letters are submitted with this motion.

The Petitioners, Elk Grove Unified School District and David W. Gordon, both represented by Mr. Terence J. Cassidy, neglected to send a timely consent letter. Based on repeated conversations with Mr. Cassidy's personal secretary, counsel for the proposed amici believes that the Elk Grove Petitioners have no actual objection to the filing of this brief. Mr. Cassidy's secretary indicated only that he wanted a more detailed list of the amici joining in the proposed brief. Counsel for the proposed amici sent that list by fax, and receipt of the fax was confirmed electronically. Counsel for the proposed amici believes that the Elk Grove Petitioners intended to consent but that they neglected to timely provide that consent in writing.

The proposed amici are a distinguished group of Christian and Jewish clergy, many of them leaders in their respective denominations or in interdenominational

organizations, together with a religious denomination that has played an important historic role in the development of religious liberty in the United States.[1] These amici are represented by experienced counsel, who is an academic expert in the field of law at issue in this case, and who has appeared in this Court as counsel for parties or amici on many occasions.

The proposed amici offer a distinct perspective that is not, to the best of counsel's knowledge, presented to the Court in any other brief. The clergy joining in the proposed brief are leaders in the monotheistic religions that are the intended beneficiaries of the religious content in the Pledge of Allegiance. These amici do not want government imposing their religious beliefs on children whose parents teach other beliefs.

More distinctively, these amici are profoundly alarmed by the many briefs arguing that the religious content of the Pledge is not to be taken seriously, and that it should be interpreted as merely historical, or demographic, or secular on some other strained theory. Such arguments

[1] The proposed amici are Rev. Dr. Betty Jane Bailey, Rev. Dr. J. Martin Bailey, Rabbi Leonard I. Beerman, Rev. Terry N. Cantrell, Rev. Dr. Harvey Cox, Rev. Dr. Robin Crawford, Rabbi Dan Fink, Pastor Richard Lee Finn, Rev. Dr. Ronald B. Flowers, Rev. Robert Forsberg, Rev. Dr. C. Welton Gaddy, Rev. Dr. David M. Graybeal, Pastor Robert Wayne Hayward, Rev. Joan Huff, Rabbi Steven B. Jacobs, Pastor Kevin James, Rev. Neal Matson, Pastor Marvin Moore, Rev. Dr. Bruce A. Pehrson, Rev. Dr. Albert M. Pennybacker, Rev. Alice de V. Perry, Rev. Brenda Bartella Peterson, Rev. Dr. Bruce Prescott, Rev. Katherine Hancock Ragsdale, Rev. Dr. George F. Regas, Rev. Dr. Duke Robinson, Rev. Dr. George Rupp, Rev. Dr. Paul D. Simmons, Rev. Jerald M. Stinson, Rev. Deborah Streeter, Pastor Samuel Thomas, Jr., Rev. Charles White, and the Unitarian Universalist Association.

attempt to strip the religious meaning from one of the most fundamental of religious propositions. The proposed brief explains, from a religious perspective, why the government should not request a religious affirmation from school children each morning, regardless of whether the government does or does not take that affirmation seriously.

The proposed brief also considers the possibility that this Court might uphold the religious content of the Pledge despite the arguments against that result. The proposed brief outlines the narrowest possible ground for upholding the religious content of the Pledge – the grounds that would do the least damage to surrounding principles of religious liberty.

Because the proposed brief offers a distinctive perspective, on behalf of serious amici represented by experienced counsel, and because the lack of consent appears to result from a failure of communication or a lawyer's busy schedule, the thirty-two named Christian and Jewish clergy and the Unitarian Universalist Association request leave to file the amicus brief that accompanies this motion.

Respectfully submitted,

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February 13, 2004

QUESTIONS PRESENTED

1. May teachers in public schools, employed and directed by government, ask children in public schools to affirm each day that the United States is "under God," where the affirmation is very short and embedded in an affirmation of political allegiance to the nation?

2. If the decision below is not to be affirmed, how can the opinion be written to do the least damage to religious liberty and constitutional principles?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
IDENTIFICATION AND INTEREST OF THE AMICI	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. Asking Students in Public Schools to Pledge Allegiance to "One Nation, under God" Violates the Establishment Clause	4
A. "I pledge allegiance to . . . one Nation, under God" Is Either a Serious Statement of Religious Faith, or It Takes the Name of the Lord in Vain	4
B. The Pledge Combines Religious and Patriotic Affirmations in a Uniquely Harmful Way	9
C. The Remedy for Government-Sponsored Religious Practices Is Prohibition, Not Individual Rights to Opt Out	15
D. This Case Is About Children in Public Schools, Where the Government's Duty of Religious Neutrality Is at Its Maximum	17
II. If This Court Is Unwilling to Affirm, It Is Essential That the Opinion Be Narrowly Confined, by Objective Criteria, to the Facts of This Case	20

TABLE OF CONTENTS – Continued

	Page
A. The Grounds Urged by Those Supporting Reversal Threaten the Whole Body of Law on School Prayer and Government Neutrality Toward Religion	22
B. If the Court Determines to Reverse, Narrow and Objective Criteria Are Available	24
1. The Pledge of Allegiance Is Not in Form a Prayer	24
2. The Pledge of Allegiance Does Not Refer to Christianity or Any Other Particular Religion	25
3. The Religious Portion of the Pledge of Allegiance Is Only Two Words	26
4. The Pledge of Allegiance Was Recited Unchanged for Fifty Years Before This Court Considered the Question	27
5. No One Can Be Required to Recite the Pledge of Allegiance	29
CONCLUSION	29

TABLE OF AUTHORITIES

Page

CASES

Abington School District v. Schempp, 374 U.S. 203 (1963) 18, 19

Board of Education v. Mergens, 496 U.S. 226 (1990) 18

Board of Education v. Minor, 23 Ohio St. 211 (1872) 19

Brown v. Board of Education, 349 U.S. 294 (1955) 20-21

Commonwealth v. Cooke, 7 Am. L. Reg. 417 (Boston Police Ct. 1859) 19

County of Allegheny v. ACLU, 492 U.S. 573 (1989) .. 10, 13, 14

Engel v. Vitale, 370 U.S. 421 (1962) 2, 15, 18, 27

Good News Club v. Milford Central School, 533 U.S. 98 (2001) 18

Hall v. Bradshaw, 630 F.2d 1018 (4th Cir. 1980) 28

Jackman v. Rosenbaum Co., 260 U.S. 22 (1922) 18

Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993) 18

Lee v. Weisman, 505 U.S. 577 (1992) 10-11, 16, 17, 25, 27

Lynch v. Donnelly, 465 U.S. 668 (1984) 10, 13, 14, 23, 28

Newdow v. United States Congress, 328 F.3d 466 (9th Cir. 2003) 4

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000) 9-10, 17

State ex rel. Weiss v. District Board, 44 N.W. 967 (Wis. 1890) 19

TABLE OF AUTHORITIES – Continued

Page

Stone v. Graham, 449 U.S. 39 (1980) 18

Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989) 10

Treen v. Karen B., 455 U.S. 913 (1982) 18

Wallace v. Jaffree, 472 U.S. 38 (1985) 10, 17-18

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) 2, 7-8, 15, 29

CONSTITUTIONS AND STATUTES

U.S. Const., amend. I

Establishment Clause ..... *passim*

Free Exercise Clause 18

Free Speech Clause 18

Equal Access Act, 20 U.S.C. §4074 *et seq.* (2000) 18

OTHER AUTHORITIES

Exodus 20:7 8

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Quick Table P-19, *School Enrollment*, available at http://factfinder.census.gov 12

TABLE OF AUTHORITIES – Continued

Page

Diane Ravitch, *The Great School Wars* (1974)..... 19

Anson Phelps Stokes, 1 *Church and State in the United States* (1950)..... 19

IDENTIFICATION AND INTEREST OF THE AMICI

This brief is filed on behalf of Christian ministers, Jewish rabbis, and the Unitarian Universalist Association, a religious association of more than one thousand congregations. These amici are concerned both about the religious liberty of persons who adhere to faith traditions other than their own, *and* about government undermining true religious faith by using religion for political purposes. These amici are especially concerned about the many governmental briefs asserting that the pledge to one nation, "under God," is not actually intended as a serious statement of faith. For government to lead the nation's children in a religious affirmation that is empty or insincere is for government to interfere with true religious faith. Because there are many amici, individual identifications and statements of interest are in the Appendix.[1]

SUMMARY OF ARGUMENT

"I pledge allegiance to . . . one Nation, under God." This statement is inherently and unavoidably a personal affirmation of religious faith. Either it is intended seriously, or it is not.

If it is intended seriously, then every day, government asks millions of school children to affirm and reaffirm their religious faith. This request is made to children who believe in a single God Whom the nation is under, and equally to children who believe in no god, many gods, or

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[1] This brief was prepared entirely by counsel for amici. No person other than amici and their counsel made any financial contribution to the preparation or submission of this brief.

god as a concept so abstract and remote that it is meaningless or inaccurate to speak of being "under" God.

If the religious portion of the Pledge is not intended as a serious affirmation of faith, then every day, government asks millions of school children to take the name of the Lord in vain. Children are asked to recite what sounds like a serious religious affirmation, but it is not intended to have any real religious meaning. This is just as bad from a perspective of religious liberty, and it is worse from a perspective of religious faith.

This governmental use of religious sentiments arises in a peculiarly sensitive context. It is not like similar affirmations by government leaders or on government-issued coins, which citizens so inclined can easily ignore. It is a unique and dispositive feature of this case that each student is asked to personally affirm a statement of religious belief. This religious affirmation is embedded in an affirmation of loyalty to the nation. If a child cannot in conscience affirm the existence of a single God and God's authority over the nation, that child cannot affirm his loyalty to the nation in the legally prescribed form. The inevitable implication is that children who have doubts about God are of doubtful loyalty to the nation. This is a clear violation of this Court's repeated concern that a person's religious views should have no impact on her standing in the political community.

This Court has long held that government may not *require* political affirmations of citizens, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), and that it may not *request* religious affirmations or exercises, *Engel v. Vitale*, 370 U.S. 421 (1962). The conflation in the Pledge of religious and political affirmations flouts and confounds this distinction. It is settled that students may not be required to say any part of the Pledge, but under this Court's cases, they cannot even be

asked to say the religious portion of the Pledge. And of course this case is about the Pledge in public schools, where the government's duty of religious neutrality is at a maximum.

If for any reason the Court is unwilling to strike "under God" from the Pledge as used in public schools, then how the opinion is written becomes critical. To simply announce that in the context of the Pledge, "one Nation, under God" is patriotic and not religious would be to decide the case by arbitrary fiat. To announce that the reference is merely to what most Americans believe, and not an affirmation of what each student taking the Pledge believes, would equally be a fiat. Because such fiats would be inconsistent with the plain language of the Pledge, they would be standardless and therefore boundless. They would threaten to undermine the Court's whole line of school prayer cases.

If the Court is unwilling to affirm, it would be best to decide the case without reaching the merits. If the judgment is to be reversed on the merits, it must be confined to its facts by narrow and objective criteria. Several such criteria are available, and they would be best used cumulatively: the Pledge is not in form a prayer; it does not refer to Christianity or any other particular religion; the religious portion could be eliminated by striking only two words; the Pledge has been recited unchanged for fifty years before the question was posed to this Court; and no one can be required to recite the Pledge.

ARGUMENT

I. Asking Students in Public Schools to Pledge Allegiance to "One Nation, under God" Violates the Establishment Clause.

A. "I pledge allegiance to . . . one Nation, under God" Is Either a Serious Statement of Religious Faith, or It Takes the Name of the Lord in Vain.

The issue in this case is whether public school teachers, under the direction of state and federal law, may ask children attending public school to stand each morning and solemnly recite: "I pledge allegiance to . . . one Nation, under God . . . " The court of appeals correctly held that this recital is a profession of religious faith. *Newdow v. United States Congress*, 328 F.3d 466, 487 (9th Cir. 2003). If the language of the Pledge is taken seriously, it cannot be anything else. Yet the United States, the school district, and many of their amici vigorously deny the plain religious meaning of the portion of the Pledge at issue. They seem to believe that the challenged words of the Pledge should not be taken seriously, that children should not understand these words to mean what they say. This effort to reinterpret the Pledge is indefensible.

To recite that the nation is "under God" is inherently and unavoidably a religious affirmation. Indeed, it is a succinct religious creed, less detailed and less specific than many creeds, but stating a surprising amount and implying more.

Most obviously, the Pledge affirms the existence of God. Further, as the court of appeals emphasized, *id.*, the Pledge affirms that there is only one God. The Pledge does not recite that the nation is under "the Gods," or that it is under "our God," "a God," "some God," or "one of the Gods," but simply that the nation is "under God." The lack of any

article or modifier necessarily affirms that there is one and only one God, that there is no other possible meaning or referent in the category mentioned. And if there is only one God, then worshipers of other alleged gods are mistaken. They are worshiping false gods; the God of the Pledge is the one true God.

The Pledge also affirms an important characteristic of the one true God. God exercises some sort of broad superintending authority that an entire nation can be "under." Fortunately, the nature of this authority is not further specified. Is it benevolent and protective, saving the nation from misfortunes and disasters? Is it judgmental, holding the nation to account for its actions? Is it triumphal, leading the nation to greatness and to victories? Is the United States uniquely or especially under God, or are all nations under God in the same way? Each student can fill in the answer to these questions according to his or her own religious beliefs, which is as it should be. But the United States, California, the Elk Grove Unified School District, and the teacher in each classroom all ask each student to affirm a formulation that encapsulates the four most basic points: there is a God, there is only one God, this is the one true God, and this nation is under the one true God.

All this is inherent in the literal words of the Pledge. But the context implies more. In theory the one true God could be the God of any monotheistic religion. But that theoretical possibility is belied by context. The population of the United States was overwhelmingly Christian when the nation was founded, and remains predominantly Christian today. Given those facts, few students would understand the Pledge to mean that the United States is under the God of the Muslims, or of the Sikhs, or of the Zoroastrians. The literal words might be so interpreted, and a non-Christian student might take comfort from such

possibilities. But in the historical and demographic context that the United States emphasizes for other purposes, U.S. Br. 20-23 & n.18, 31-33, most students will understand their government to be asking them to pledge allegiance to one nation under the God of the Christians. Many students probably assume that at least this is also the God of the Jews, but this equivalence works only from a Christian perspective. From a Jewish perspective, the Triune God of Father, Son, and Holy Spirit is quite different from the Old Testament's more unified conception of God.

The United States, the school district, and their amici attempt to deny the obvious religious meaning of the part of the Pledge at issue. They claim that "The Pledge Is Not a Religious Act or a Profession of Religious Belief." Elk Grove Br. 30. "It is not a religious exercise at all." U.S. Br. 45. To take these claims seriously is to say that the children are not expected to believe what they are asked to recite, and that the Pledge is not intended to mean what it plainly says. According to the school district and the United States, the students say the nation is "under God," but they do not actually *mean* that the nation is "under God." The Pledge is not a profession of belief, but a false or insincere recitation. It is an apparent statement of religious faith redirected – misappropriated – to secular and political purposes.

The United States is creative but unpersuasive in its efforts to imagine other possible meanings for the religious affirmation in the Pledge. It says that the Pledge merely "acknowledges" the "historical" and "demographic" facts that the Nation was founded by individuals who believed in God and that most Americans still believe in God. *Id.* at 32-33. But that is plainly not what the Pledge says. Teachers might easily ask children to pledge allegiance to "one Nation, most of whose citizens believe in God," or to

"one Nation, founded by a generation that mostly believed in God." It might seem odd to tuck in such demographic or historical facts, but it would not be difficult. Words are readily available to convey the meanings proffered by the United States. But no such words were used.

When students recite the Pledge, they pledge allegiance "to the Flag," "to the Republic for which it stands," and to "one Nation, under God." "One Nation" is an appositive phrase, an alternate name for the preceding noun ("Republic for which it stands"), and standing in the same relation to the rest of the sentence. "Under God" describes the "one Nation" to which allegiance is pledged. The operative words at issue in this case are: "I pledge allegiance to . . . one Nation, under God." There is no statement about what many Americans now believe, or have believed through time; there is no statement about what the Founders believed. There is only a profession of what the student believes: "*I* pledge allegiance . . . to one Nation, under God."

As the Court observed long ago, the "flag salute and pledge requires affirmation of a belief and an attitude of mind." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633 (1943). Speaking of the wholly secular pledge as it then existed, the Court said that "It requires the individual to communicate by word and sign his acceptance of the political ideas expressed." *Id.* And the Court made clear that recitation of the Pledge affirmed not just allegiance to the nation, but also the truth of "liberty and justice for all" and the other descriptive characteristics attributed to the nation in the words of the Pledge. *Id.* at 634 & n.14. The Court recognized that one reason for refusing to recite the Pledge might be disagreement with one or more of these descriptive claims. *Id.* It is as true today as in 1943 that recitation of the Pledge in a solemn ceremony affirms the truth of the propositions included

therein, including the additional belief, inserted in 1954, that the nation is under the one true God. To affirm this even as a "descriptive" matter necessarily entails affirming the propositions included in such a description: that there is a God, and only one, and God is of such a nature that a nation can be under that God.

We belabor the obvious at such length only because the school district and the United States have denied the obvious at such length. "The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own," *id.* at 641, and because for most Americans, the creed involved is also part of their own.

If the religious language in the Pledge is *not* intended to sincerely affirm the succinct creed entailed in its plain meaning – if it does *not* sincerely affirm that the nation is "under God" – then it is a vain and ineffectual form of words. The numerically predominant religious faiths in the United States have a teaching about such vain references to God: "Thou shalt not take the name of the Lord thy God in vain." Exodus 20:7. If the briefs of the school district and the United States are to be taken seriously, then every day they ask school children to violate this commandment.

The school district and the United States cannot escape the plain meaning of the Pledge they request of students. Either government is asking school children to make a sincere statement of belief in the one true God Whom the Nation is under, or it is asking children to take the name of the Lord in vain. Neither request is consistent with government's duty of neutrality toward and among religions. When government asks children for a profession of religious faith, it is no defense to say "we didn't mean for them to take it seriously," or "we asked them to recite it without meaning it."

The hostile political reaction to the decision below did not erupt because millions of Americans want their children to recite "under God" as a "descriptive, not 'normative'" statement, meaning only that the nation was "founded by individuals whose belief in God gave rise to the governmental institutions and political order they adopted." U.S. Br. 40. The political reaction erupted because millions of Americans understand "under God" to mean exactly what it says, and they believe in that proposition and want their children to affirm it. These *individuals* of course have every right to teach their children that the nation is under the authority of God. But *government* does not have the right to ask anyone – least of all school children – to affirm this or any other religious proposition.

B. The Pledge Combines Religious and Patriotic Affirmations in a Uniquely Harmful Way.

The Pledge combines a profession of religious faith with a profession of national allegiance in a single sentence. That is, the chosen form by which the nation requests a profession of loyalty also requests a profession of religious faith. The unavoidable implication is that students who doubt whether the nation is "under God" are also of doubtful loyalty to the nation. Students who can not in conscience affirm that the nation is "under God" cannot recite the officially prescribed Pledge of Allegiance to the nation.

This Court has repeatedly expressed its concern that government endorsements of religious viewpoints tend to exclude from the political community citizens who do not share those viewpoints:

> School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents "that they are outsiders, not full

> members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."

Santa Fe Independent School District v. Doe, 530 U.S. 290, 309-10 (2000), quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). And again:

> The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community."

County of Allegheny v. ACLU, 492 U.S. 573, 593-94 (1989), quoting *Lynch*, 465 U.S. at 687 (O'Connor, J., concurring).[2]

These opinions (including those cited in footnote 2) were rendered in cases of free-standing religious messages, some explicit and some implicit, delivered or endorsed by a government agency – prayers offered at public events, religious displays erected on public property, and a tax exemption for religious publications. In none of these cases were individual citizens asked to personally recite and affirm the religious message. *Lee v. Weisman* emphasized that students were asked to stand in apparent participation with the offering of the prayer, 505 U.S. at 593, but no student was asked to repeat or affirm the contents of the prayer. Only in *Lee* was the religious message explicitly combined with a patriotic message, *id.*

[2] To similar effect, see *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9-10 n.1 (1989) (plurality opinion); *Lee v. Weisman*, 505 U.S. 577, 627 (1992) (Souter, J., concurring); *Wallace v. Jaffree*, 472 U.S. 38, 69 (1985) (O'Connor, J., concurring); *Lynch v. Donnelly*, 465 U.S. 668, 687-88 (O'Connor, J., concurring).

at 581-82, and there it was the rabbi invited to offer the prayer, not the Congress of the United States, who chose to include patriotic sentiments in his prayer.

This case is worse than any of those. Unlike any previous case in this Court, the Pledge explicitly links religious faith to political loyalty and thus to standing in the political community. A student cannot affirm her allegiance to the nation unless she can also affirm the religious message that this nation is "under God." Government requests simultaneous affirmation of both the patriotic and religious professions of faith. The message of exclusion is unmistakable. What kind of citizens can they be if they cannot even recite in good faith the full pledge of allegiance to the nation?

These concerns are not merely hypothetical; "under God" in the Pledge of Allegiance is not harmless. There are students who conscientiously object to the religious affirmation in the Pledge, and students who refuse to affirm it. These amici and their counsel know personally of students who drop out at the two critical words, avoiding confrontation with their teachers and classmates by reciting the patriotic portions of the Pledge and unobtrusively omitting the religious portions.

Atheist and agnostic children obviously cannot in good faith recite that the nation is "under God." Children raised in nontheistic religions – most Buddhists, Jains, Confucionists, Humanists, Ethical Culturalists, many Unitarians, and others – cannot in good faith recite that the nation is "under God." Children raised in polytheistic religions – many Hindus, Wiccans, neopagans, Santerians, animists, and others – cannot, if they think about the monotheistic wording of the Pledge, recite in good faith that the nation is under only one God. Jewish, Muslim, Sikh, and other non-Christian monotheistic children can recite the Pledge only if they focus on its literal words and

disregard the meaning likely intended by the government that prescribes it and the meaning intended or assumed by most of their Christian classmates.

Some of these groups are marginal in American society, but their constitutional rights are no less protected for that. It is a principal purpose of the guarantees of religious liberty to protect religious minorities. And in fact, many of these groups are more numerous than they are visible.

Millions of children are asked, every day of school, to affirm a religious proposition inconsistent with what their parents teach at home. This number is not hyperbole; it can be approximately calculated. At the time of the 2000 Census, more than 48 million children attended public schools.[3] In the largest private surveys, more than 15% of the population reports itself as not adhering to any of the monotheistic religions.[4] Fifteen percent of 48 million school children implies at least 7.2 million children in public schools who are asked every day to affirm a religious proposition that they cannot in good conscience affirm.

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[3] Quick Table P-19, *School Enrollment*, available at http://factfinder.census.gov. Click on "People" and scroll down.

[4] *See* Barry A. Kosmin, Egon Mayer, & Ariela Keysar, *American Religious Identification Survey 2001*, Exhibit 1 at 13 (available at *http://www.gc.cuny.edu/studies/aris.pdf*). This study surveyed more than 50,000 adult Americans. Persons identifying themselves as Buddhists, Hindus, Unitarian Universalists, Agnostics, Humanists, and No Religion totaled 15.3%. To this should be added some unknown fraction of the 5.4% who refused to answer, about .2% reported as Other Unclassified Non-Christian, and small numbers of other non-monotheistic faiths. Those identifying themselves as some variety of Christian totaled 76.5%. *Id.* at 12. In a more generic approach to the question, 75% reported themselves as "Religious" (37%) or "Somewhat Religious," (38%), and 16% as "Secular" (10%) or "Somewhat Secular" (6%). *Id.*, Exhibit 3 at 19.

They face this request in a context where failure to affirm the religious proposition means a failure to affirm their allegiance to the nation in the form prescribed by law and – perhaps more important – in the form prescribed by their classroom teacher, the most immediate and important governmental authority figure in their lives.

The United States argues that the religious proposition embedded in the Pledge cannot be considered in isolation, but rather that the Pledge must be taken as a whole. U.S. Br. 39-40. It claims that the patriotic propositions in the Pledge somehow make the religious proposition constitutionally acceptable, as secular symbols of Christmas were held to make religious symbols of Christmas acceptable in *Lynch v. Donnelly*, 465 U.S. 668 (1984), or the menorah in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989). But this reasoning is backwards. In this context, the conjunction of religious and patriotic propositions makes the request for a religious affirmation worse, not better.

In *Lynch* and *Allegheny*, the display of secular and religious symbols created a sort of forum, in which government could be taken to send multiple messages. The religious and secular messages were not so much combined as presented in the alternative. The reindeer and talking wishing well did not secularize the creche; rather, they communicated another view of Christmas. The Christmas tree neither secularized nor Christianized the menorah; together, they communicated symbols of two holidays, two faiths, and a message of religious pluralism. The Court held that taken as a whole, these mixed messages did not endorse the religious meaning of either Christmas or Hanukkah. *Lynch*, 465 U.S. at 680; *id.* at 693 (O'Connor, J., concurring); *Allegheny*, 492 U.S. at 635 (O'Connor, J., concurring) (city "conveyed a message of pluralism and freedom of belief during the holiday season").

Both religion and religious liberty would be safer if government refrained from sending any kind of message about religious holy days. But neither the facts nor the Court's reasoning in *Lynch* and *Allegheny* justify what the government does in this case. Most important, no government official in *Lynch* or *Allegheny* asked any citizen to affirm or repeat any part of the displays at issue. Individuals were free to avoid the display, ignore the display, or focus on only part of the display. Individuals observing the display in *Lynch* could emphasize its religious elements, its secular elements, or both, according to their own varied predispositions. Individuals observing the display in *Allegheny* could emphasize the Christian holiday of Christmas, the Jewish holiday of Hanukkah, or the American commitment to religious pluralism, according to their own predispositions. In effect, the religious and secular messages were presented in the alternative, not in the conjunctive.

Here the religious and secular messages are inextricably combined, with the religious message squarely in the middle of a single sentence with the patriotic message. The children are asked to recite and affirm the entire sentence. The religious affirmation is impossible to ignore: each child must either recite it, or make a conscious decision *not* to recite it – to adopt the awkward expedient of dropping out in mid-sentence and then rejoining the recitation when the religious affirmation has passed. The religious and patriotic messages are not offered in the alternative, but as a unified whole. The governmental demand to affirm both messages neither neutralizes the religious affirmation nor offers an alternative. Instead, it casts doubt on the patriotism and political allegiance of those who cannot in good faith affirm the religious portion of the message.

C. The Remedy for Government-Sponsored Religious Practices Is Prohibition, Not Individual Rights to Opt Out.

This Court has long held that no one may be required to recite the Pledge of Allegiance. *West Virginia v. Barnette*, 319 U.S. 624 (1943). Even so, school teachers remained free to lead willing students in the Pledge, because when *Barnette* was decided, the Pledge was entirely secular and patriotic.

With respect to religious recitals, the rule has been fundamentally different, ever since the Court's first school prayer case, *Engel v. Vitale*, 370 U.S. 421 (1962). There the Court held that it was not enough to excuse objecting children from participation in the brief government-sponsored prayer. The only adequate remedy was that school employees not lead *any* students in prayer, willing or otherwise. *Id.* at 430. The Court has adhered to this rule without exception ever since. If a government-sponsored religious practice violates the Establishment Clause, the government sponsorship is enjoined; government is not permitted to continue its religious activity subject to individual rights to opt out.

The reason for this distinction lies deep in constitutional structure and the legitimate functions of government. On political matters, even deeply controversial ones, government may lead public opinion to the best of its ability. It can encourage patriotism and civic duty; it can rally public opinion around the war effort, the civil rights movement, the Mars mission, the tax cuts, or the President's latest initiative on any other issue. It can discourage illicit drugs, encourage physical fitness, or urge the populace to "Whip Inflation Now." Citizens remain free to agree or disagree, to rally in support of the government or in protest, to support the incumbent administration or to vote the rascals out.

None of this applies to religion. On religious matters, the government does not lead. The government has no legitimate role in shaping the religious opinions of the American people – not by coercion, and not by persuasion or endorsement either.

> The First Amendment protects speech and religion by quite different mechanisms. Speech is protected by ensuring its full expression even when the government participates, for the very object of some of our most important speech is to persuade the government to adopt an idea as its own. The method for protecting freedom of worship and freedom of conscience in religious matters is quite the reverse. In religious debate or expression the government is not a prime participant, for the Framers deemed religious establishment antithetical to the freedom of all. . . . A state-created orthodoxy puts at grave risk the freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.

Lee v. Weisman, 505 U.S. 577, 591-92 (1992).

By combining religious and patriotic affirmations in a single sentence, the Pledge straddles both sides of this distinction. And by emphasizing the patriotic elements of the Pledge, and insisting that these elements determine the character of the Pledge as a whole, the United States seeks to eviscerate the distinction. Its approach would lead to a regime in which objectors to government-sponsored religion would get only a right to opt out, so long as the religious observance is combined with a sufficient quantity of political observance to put the combined whole under the rule for government-sponsored political speech instead of the quite different rule for government-sponsored religious speech.

At bottom, the school district and the United States claim the right to request a profession of religious faith on two conditions: that they combine it with a profession of some political sentiment, and that they allow objecting individuals to opt out. This Court's religious liberty cases cannot be evaded so easily. Government cannot burden religious minorities with the onus of refusing to affirm a religious proposition; government must refrain from making the request. The only result consistent with this Court's cases is that government cannot ask children in public schools to recite the Pledge of Allegiance until and unless the religious content of the Pledge is omitted.

D. This Case Is About Children in Public Schools, Where the Government's Duty of Religious Neutrality Is at Its Maximum.

This case is not about whether government can request this mixed patriotic and religious pledge of adults. It is about whether government can request it of children in the public schools. Nowhere has this Court been more sensitive to government's obligation of religious neutrality than in the public schools. With remarkable consistency, this Court has held without exception for more than forty years that government may neither endorse religious messages in the public schools, nor discriminate against religious speech by students speaking in their personal capacities and without school sponsorship.

This Court has invalidated government-sponsored religious messages in the public schools in every case to present any variation on the issue.[5] There is *no exception*

[5] *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000) (prayer chosen by student elections); *Lee v. Weisman*, 505 U.S. 577 (1992) (prayer by clergyman invited by school administration); *Wallace*

(Continued on following page)

to this line of cases; all cases permitting private religious speech in schools were cases in which the Court found the private speaker received neither endorsement, nor sponsorship, nor any form of preference from the school.[6]

The United States says that "If a thing has been practised for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it." U.S. Br. 27, quoting *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922). But of course, religious recitals in the public schools have not been practiced for two hundred years "by common consent." "Almost from the beginning religious exercises in the public schools have been the subject of intense criticism, vigorous debate, and judicial or administrative prohibition." *Abington School District v. Schempp*, 374 U.S. 203, 271 (Brennan, J., concurring); *see generally id.* at 271-76.

The nineteenth-century conflict over Bible reading in the public schools produced mob violence and church

v. Jaffree, 472 U.S. 38 (1985) (moment of silence amended in manner that encouraged prayer); *Treen v. Karen B.*, 455 U.S. 913 (1982) (prayer led by student volunteer, or if none, by teacher); *Stone v. Graham*, 449 U.S. 39 (1980) (Ten Commandments passively posted on classroom walls); *Abington School District v. Schempp*, 374 U.S. 203 (1963) (prayer and Bible reading over school intercom); *Engel v. Vitale*, 370 U.S. 421 (1962) (prayer led by teacher).

[6] *Good News Club v. Milford Central School*, 533 U.S. 98 (2001) (after-school religion club); *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993) (religious community group renting school facilities on weekends); *Board of Education v. Mergens*, 496 U.S. 226 (1990) (upholding Equal Access Act, 20 U.S.C. §4074 *et seq.* (2000)). There is a "crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Mergens*, 496 U.S. at 250 (plurality opinion).

burnings in Eastern cities.[7] In the wake of Catholic immigration, religion in the public schools produced exactly the sort of violent religious confrontation the Founders had most sought to avoid. Under social conditions changed from those of the overwhelmingly Protestant population at the founding, religion in schools became a serious violation of the disestablishment principle, inflicting precisely "those consequences which the Framers deeply feared." *Schempp*, 374 U.S. at 236 (Brennan, J., concurring). The principle of disestablishment did not change, but the nation was forced to confront a previously ignored application of the principle. The majority could not impose its religious views on the religiously diverse students in public schools.

The first cases restricting religious observances in public schools date from the latter part of this period.[8] On the other hand, some schools whipped or expelled Catholic children who refused to participate in Protestant observances, and some courts upheld such actions.[9] The dispute over the Protestant Bible revealed the impossibility of conducting "neutral" religious observances even among diverse groups of Christians. Today of course, the range of religious pluralism in America is vastly greater. The

[7] See Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society 1780-1860*, at 170 (1983); Diane Ravitch, *The Great School Wars* 36, 66, 75 (1974); Anson Phelps Stokes, 1 *Church and State in the United States* 830-31 (1950).

[8] *State ex rel. Weiss v. District Board*, 44 N.W. 967 (Wis. 1890) (mandamus against Bible reading); *Board of Education v. Minor*, 23 Ohio St. 211 (1872) (upholding and defending school board's decision to eliminate Bible reading and hymns); *see Schempp*, 374 U.S. at 276 n.51 (Brennan, J., concurring) (collecting cases).

[9] *Commonwealth v. Cooke*, 7 Am. L. Reg. 417 (Boston Police Ct. 1859); Kaestle at 171; 1 Stokes at 829.

possibility of "neutral" religious observance remains a fiction. We may assume that the brief profession of faith in the Pledge was a genuine attempt at neutrality, but it did not and could not succeed.

The school district and the United States rely on an array of brief and generic government endorsements of religion in other contexts – on Thanksgiving proclamations, the national motto on coins, the rarely sung fourth verse of the National Anthem, and statements of individual political leaders now or in the past. U.S. Br. 24-26, 28-29; Elk Grove Br. 31-32, 36-37. None of these examples arose in the public schools; to repeat, there are *no exceptions* in this Court's precedents to the government's duty of religious neutrality in the public schools. And *all* of the examples cited by the school district or the United States are statements by government agencies or political leaders that citizens can attend to or ignore as they choose. They have *no example* of any governmental request to individual citizens – let alone school children – to affirm a statement of religious faith. And *a fortiori*, none of their examples put individual citizens in the position of being unable to affirm their loyalty to the nation unless they also affirm their belief in God.

This Court has never permitted teachers to urge religious views on children enrolled in public schools. It should not now let them ask all the children to recite a religious affirmation every morning, no matter how brief the affirmation.

II. If This Court Is Unwilling to Affirm, It Is Essential That the Opinion Be Narrowly Confined, by Objective Criteria, to the Facts of This Case.

"[I]t should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply

because of disagreement with them." *Brown v. Board of Education*, 349 U.S. 294, 300 (1955). The hostile public reaction to the decision below is not a reason to validate the power of government to request daily professions of religious faith from children in the public schools.

Yet these amici have no way to know if this Court will adhere to these principles of the Establishment Clause or to some competing principle of prudence or "passive virtues." The Court may choose the strategy of the willow rather than that of the oak. The Court may fear that civil disobedience or proposals for constitutional amendments, galvanized by a decision in this case, would spread beyond the facts of this case and eventually do even greater damage to the very constitutional principles at issue. Amici do not endorse such reasoning, but we recognize the possibility. And so we must address another question in the alternative: If the decision below is not to be affirmed, how can the opinion be written to do least damage to religious liberty and constitutional principles?

One possibility is to vacate the judgment for lack of standing; another is to certify the standing question to the Supreme Court of California. Another is to reverse because the claim here interferes with custody proceedings pending or decided in the state courts in California. These amici claim no interest or expertise in those issues and will not address them here. A promising potential compromise, elaborated in the amicus brief of Professors Lawrence Sager and Christopher Eisgruber, is to require school districts to explicitly tell children of their existing right to omit any words in the Pledge with which they disagree.

In the remainder of this brief, we address alternative grounds for an opinion that wholly reverses on the merits.

A. The Grounds Urged by Those Supporting Reversal Threaten the Whole Body of Law on School Prayer and Government Neutrality Toward Religion.

If this Court decides to reverse on the merits, then the content of the opinion will be critical. If this Court holds that government can request daily professions of faith from school children, there is an obvious danger of undermining the whole body of law on school prayer and government neutrality toward religion. Much will depend on how this case is distinguished from others.

The distinctions offered by the school district, the United States, and their amici will not suffice. They will not suffice because they depend on arbitrary fiat, or at best on deeply subjective and impressionistic judgments. Neither provides any principled basis for distinguishing future cases.

To simply announce that in the context of the Pledge, "one Nation, under God" is patriotic and not religious would be to decide the case by fiat. "One Nation, under God" is a religious claim, and to deny that fact is sacrilegious. Such an arbitrary recharacterization of the religious as secular would offer no principles capable of marking boundaries.

It would be equally arbitrary to say that the religious portion of the Pledge is a mere recognition of widely held religious views, and not a request for a personal pledge of each student's religious views. "*I* pledge allegiance to . . . one Nation, under God" is not in any meaningful sense a mere recognition of the views of others or a statement describing the views of others.

Judges are repeatedly asked to make such arbitrary characterizations – to announce that plainly religious symbols and statements are really secular, or that government sponsorship of religious symbols and statements

is mere recognition, without endorsement, of privately held views. Once such arguments are applied to religious statements that government makes in its own voice, or to religious affirmations that government requests of school children, the same arguments can be made in nearly every case. These arguments are universally applicable because they are wholly arbitrary. There are no principles for deciding that some religious statements are really religious, while others (although religious in their plain meaning) are really secular. There are no principles for deciding that some statements by government are really statements by government, and that others (although phrased in the government's own voice) are merely recognitions of the privately held views of others.

It is true that Justices of this Court have long assumed that some modest degree of government-sponsored ceremonial deism either does not violate the Establishment Clause, or does not do enough harm to justify absolutist enforcement by this Court, or perhaps just does not do enough harm to any identifiable victim to support standing to sue. Dicta suggest that "In God We Trust" on the coins, or presidential Thanksgiving Day proclamations, will not be invalidated by this Court.[10] But the Court has never been required to define the boundary between these tolerated manifestations of government-sponsored religion and all the others that are unconstitutional. No definition has been required, because these dicta have never been part of a holding.

The Pledge of Allegiance is fundamentally different from all the other religious statements mentioned in such dicta. None of the other examples occurred in the public

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[10] *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 676 (1984); *id.* at 692-93 (O'Connor, J., concurring); *id.* at 716-17 (Brennan, J., dissenting).

schools, and none of the others involve any individualized demand on non-believing citizens. No one has to read the fine print on their coins, and few ever see the text of Thanksgiving proclamations. Political leaders have personal rights of free speech, and it is often hard to distinguish protected statements in their personal capacity from constitutionally restricted statements on behalf of the government.

What the government does in this case goes far beyond any of those examples. None of the dicta tentatively or casually approving the religious portion of the Pledge of Allegiance considered or even noticed the fact that the Pledge is unique in requesting a religious affirmation from individual citizens. A judgment that government can ask students to recite the current version of the Pledge of Allegiance would require the Court to draw the line between acceptable and unacceptable government sponsorship of religion in an especially sensitive context.

The Court cannot just say that the religious portion of the Pledge is harmless, because it plainly is not. It is more harmful than much of what the Court has struck down. To hold otherwise would be another form of arbitrary recharacterization, with no principled boundaries, and capable of application to almost any other case. To limit a reversal in this case to its facts, the Court must emphasize objective criteria, capable of ready application in subsequent cases. We suggest several, and we suggest that they be applied cumulatively and conjunctively.

B. If the Court Determines to Reverse, Narrow and Objective Criteria Are Available.

1. The Pledge of Allegiance Is Not in Form a Prayer.

The school district and the United States emphasize that the Pledge is not a prayer. U.S. Br. 41; Elk Grove Br.

30-31. We agree. We do not believe that leading students in recital of a creed is any more defensible than leading them in prayer, but at least it is different, and it is much less common. Apart from the Pledge of Allegiance, we are not aware of any other governmental effort to lead either students or adult citizens in religious creeds. With the single exception of the Pledge, the American people have generally understood that government cannot prescribe religious creeds for individuals to recite. But government efforts to lead people in prayer are legion. Essential to any opinion reversing in this case would be a bright-line rule that no exception justifies any form of government sponsorship of a prayer in any public school.

2. The Pledge of Allegiance Does Not Refer to Christianity or Any Other Particular Religion.

Even the few Justices who have dissented from this Court's school prayer decisions have acknowledged that government-sponsored references to religion must be broadly interfaith. *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (agreeing that constitutional tradition precludes government-sponsored endorsements of religion "where the endorsement is sectarian, in the sense of specifying details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ"). The Pledge conforms to that restriction about as well as can be managed.

No endorsement of religion can be neutral between the religious and the non-religious, and it is nearly as impossible for any religious reference to be entirely neutral as among religions. "Consider the religions of the world" is about as abstract and generic a religious endorsement as can be imagined. But it is not neutral; it suggests religious exploration and choice, and thus is not

friendly to those who experience their religion as an inherited commitment or obligation.[11] And as a practical matter, government cannot endorse religion so abstractly as this hypothetical. Politically viable endorsements always come in some particular form, broadly consistent with Christianity and inevitably inconsistent with some other faith.

So it is with the Pledge. As we have seen, it is not entirely neutral, but it tries to be. It is monotheistic, inconsistent with both nontheistic and polytheistic religions. In context it may be understood to refer to God as understood by Christians, but it carefully refrains from saying so. Despite its shortcomings, it is about as generic as language would permit. If the Court were to reverse, it should say that no government-sponsored reference to religion may refer to any particular religion.

3. The Religious Portion of the Pledge of Allegiance Is Only Two Words.

The Pledge could be wholly secularized by deletion of only two words. If there is to be any *de minimis* exception to the Establishment Clause, here is a way to quantify it. There may be a sense of arbitrariness about any particular number, but two is the number presented by the facts of this case. And two words has functional significance.

Most important, the limitation to two words facilitates the practice of nonbelieving students who drop out at the religious portion of the Pledge. The more words they must omit, the harder it is to drop out unobtrusively. Dropping

[11] *See* Mary Ann Glendon, *Law, Communities, and the Religious Freedom Language of the Constitution*, 60 Geo. Wash. L. Rev. 672, 679 (1992).

out for a paragraph would be impossible without attracting notice. Dropping out for a whole sentence would be difficult. Dropping out for two words can often be managed, even day after day. It is not a happy or a comfortable solution; it should not be necessary. But it is available, and students use it. It is available only because the religious portion of the Pledge is extremely short. Anything longer than two words would erode the option of declining to recite the profession of faith without confronting teachers or classmates.

The limitation to two words also reinforces the ban on reference to any particular religion. Only so much content can be packed in to two words. Those who amended the Pledge did so with remarkable efficiency; there is a lot of meaning in the two added words. But two words are more likely to make sense if they are abstract or generic. It is hard to compress particularistic messages into only two words.

In *Lee v. Weisman*, 505 U.S. 577 (1992), this Court held that there is no *de minimis* exception to the Establishment Clause, at least in public schools. *Id.* at 594. We agree. But if an exception is to be made here, the Court should emphasize that the religious content here is a tiny fraction of the brief prayers at issue in *Lee*. Those prayers were each well over one hundred words; here, the profession of religious faith depends on just two words. In *Engel v. Vitale*, 370 U.S. 421 (1962), this Court held that twenty-two words of generic monotheistic prayer were too many. This Court should reaffirm that holding. Even if two words are not too many, twenty-two clearly are, and any more than two probably are.

4. The Pledge of Allegiance Was Recited Unchanged for Fifty Years Before This Court Considered the Question.

The words "under God" were inserted into the Pledge of Allegiance in 1954, fifty years before the question of the

constitutionality of that insertion reached this Court. Much of the population is attached to the Pledge in its current form; no one under the age of 55 can remember when it was any other way.

Long repetition cannot insulate a practice from constitutional challenge. But it can be one objective factor, in combination with others, to mark the boundaries of a decision upholding the Pledge. A requirement of long repetition would insure that this decision would not become the basis for an endless round of new experiments in government imposition of religion. It would confine the decision to a rather short list of existing practices that have long gone unchallenged. *See Lynch v. Donnelly*, 465 U.S. 668, 693 (O'Connor, J., concurring) (some familiar practices, "because of their history and ubiquity," are not understood to endorse particular religious beliefs).[12] This Court should uphold only those government-sponsored religious practices that have been practiced in substantially the same form for half a century or more before this Court first reviews them.

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[12] *See also* the more fully elaborated reasoning in *Hall v. Bradshaw*, 630 F.2d 1018, 1023 n.2 (4th Cir. 1980), speaking of religious references on coins and seals and in public rituals:

> In a very real sense they may be treated as "grandfathered" exceptions to the general prohibition against officially composed theological statements. Present at the very foundations, few in number, fixed and invariable in form, confined in display and utterance to a limited set of official occasions and objects, they can safely occupy their own small, unexpandable niche in Establishment Clause doctrine. Their singular quality of being rooted in our history and their incapacity to tempt competing or complementary theological formulations by contemporary agencies of government sufficiently cabin them in and distinguish them from new, open-form theological expressions published under the aegis of the state.

5. No One Can Be Required to Recite the Pledge of Allegiance.

West Virginia v. Barnette, 319 U.S. 624 (1943), remains good law. Reciting the Pledge is optional, and a student who declines to recite it (in whole or in part) need give no reason. He is subject to no discipline, so long as his refusal is quiet and nondisruptive. He forfeits none of his general right to protection from violence, bullying, or harassment from other students; the school must provide him with the equal protection of the laws in the most literal and fundamental sense.

Of course many students do not know about these protections, and probably many teachers and school boards do not know about them either. However this case is decided, this opinion should remind the nation of these rights. The Sager-Eisgruber amicus brief suggests that schools be required to inform children of these rights. That is not a sufficient solution in our view, but it would be a large step forward. Whatever its content, an optional Pledge of Allegiance does less harm to political and religious liberty than a mandatory Pledge of Allegiance.

CONCLUSION

The judgment below should be affirmed.

If the Court is unable or unwilling to affirm, the judgment should be vacated or reversed on the narrowest possible ground. If the judgment is reversed on the merits, the opinion should be confined to its objective facts, and it should emphasize that:

1) the Pledge is not in form a prayer;

2) the Pledge does not refer to Christianity or to any other particular religion;

3) the religious portion of the Pledge is only two words;

4) the Pledge was recited unchanged for fifty years before this Court considered the question;

5) no one can be required to recite the Pledge; and

6) all these factors are essential to the decision.

Respectfully submitted,

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February 13, 2004

APPENDIX

Further Identification and Interest of Amici

Each of the individual clergy is an ordained minister in his or her denomination. The ordaining denomination is noted only where it is not apparent from present or past positions held. Each of the individual clergy joins this brief in his or her individual capacity.

Rev. Dr. Betty Jane Bailey is former Associate Minister of Union Congregational Church in Upper Montclair, New Jersey. She has served in numerous missionary and administrative positions for churches of many denominations.

Rev. Dr. J. Martin Bailey is Chair of the Board of Trustees of the Overseas Ministries Study Center, and former Associate General Secretary of the National Council of Churches. He is an ordained minister of the United Church of Christ.

Rabbi Leonard I. Beerman is Rabbi Emeritus of Leo Baeck Temple in Los Angeles, California.

Rev. Terry N. Cantrell is pastor of Bethel Baptist Church in Santa Ana, California.

Rev. Dr. Harvey Cox is Hollis Professor of Divinity at Harvard University in Cambridge, Massachusetts. He is a former university chaplain and an ordained Baptist minister.

Rev. Dr. Robin Crawford is pastor-at-large in the Presbytery of San Francisco, a unit of the Presbyterian Church (U.S.A.).

Rabbi Dan Fink is Rabbi of Congregation Ahavath Beth Israel in Boise, Idaho.

Pastor Richard Lee Finn is former Associate Director of Public Affairs and Religious Liberty for the General Conference of Seventh-day Adventists. (The General Conference is the church's world headquarters, in Silver Spring, Maryland.) He is former pastor of Sunnyvale Seventh-day Adventist Church in Sunnyvale, California.

Rev. Dr. Ronald B. Flowers is John F. Weatherly Professor of Religion Emeritus at Texas Christian University in Fort Worth, Texas, and former pastor of Crofton Christian Church (Disciples of Christ) in Crofton, Kentucky.

Rev. Robert Forsberg is a Director of North American Interfaith Network, Inc., and former Executive Director of Wider City Parish, an inner-city Christian social ministry in New Haven, Connecticut. He is an ordained Presbyterian minister.

Rev. Dr. C. Welton Gaddy is President of The Interfaith Alliance and The Interfaith Alliance Foundation, and pastor of Northminster Church in Monroe, Louisiana. He is an ordained Baptist minister.

Rev. Dr. David M. Graybeal is Professor Emeritus of Theology at Drew University in Madison, New Jersey, and an ordained minister of the United Methodist Church.

Pastor Robert Wayne Hayward is pastor of Independence Seventh-day Adventist Church in Independence, Kansas.

Rev. Joan Huff is Parish Associate at the 7th Avenue Presbyterian Church in San Francisco, California.

Rabbi Steven B. Jacobs is Rabbi of Temple Kol Tikvah in Woodland Hills, California.

Pastor Kevin James is Director of Legislative Affairs for the Nevada/Utah Conference of Seventh-day Adventists, and pastor of Ogden Seventh-day Adventist Church in Ogden, Utah.

Rev. Neal Matson is pastor of the Progressive Church of Christ in Fairbanks, Alaska.

Pastor Marvin Moore is Editor of *Signs of the Times*, a religious publication of the Seventh-day Adventist Church, and former pastor of a Seventh-day Adventist Church in Waco, Texas.

Rev. Dr. Bruce A. Pehrson is pastor of St. Matthew's United Methodist Church in Acton, Massachusetts.

Rev. Dr. Albert M. Pennybacker is Chief Executive Officer of the Clergy Leadership Network, former President of The Interfaith Alliance, former Associate General Secretary for Public Policy of the National Council of Churches, and former Senior Minister of University Christian Church (Disciples of Christ) in Fort Worth, Texas. He has also pastored Disciples of Christ Churches in Youngstown and Shaker Heights, Ohio.

Rev. Alice de V. Perry is Adjunct Professor at Andover Newton Theological School in Newton, Massachusetts, and Pastoral Counselor at Milford Pastoral Counseling Center in Milford, Connecticut. She is an ordained minister of the United Church of Christ.

Rev. Brenda Bartella Peterson is Executive Director of the Clergy Leadership Network, and former pastor of

Newtown Christian Church (Disciples of Christ) in Georgetown, Kentucky.

Rev. Dr. Bruce Prescott is Executive Director of Mainstream Oklahoma Baptists, former pastor of Clairette Baptist Church in Clairette, Texas, and former pastor of Easthaven Baptist Church in Houston, Texas.

Rev. Katherine Hancock Ragsdale is Vicar of St. David's Episcopal Church in Pepperell, Massachusetts.

Rev. Dr. George F. Regas is Executive Director of The Regas Institute, and Rector Emeritus of All Saints Episcopal Church in Pasadena, California.

Rev. Dr. Duke Robinson is Pastor Emeritus of Montclair Presbyterian Church in Oakland, California, and former Adjunct Professor at San Francisco Theological Seminary.

Rev. Dr. George Rupp is former Dean of the Harvard Divinity School, former President of Rice University, and former President of Columbia University. He is an ordained Presbyterian minister.

Rev. Dr. Paul D. Simmons is Professor of Family and Geriatric Medicine and Adjunct Professor of Philosophy at the University of Louisville in Louisville, Kentucky. He is former Professor of Christian Ethics at Southern Baptist Theological Seminary in Louisville, and former Adjunct Professor at Louisville Presbyterian Seminary. He is former pastor of First Baptist Church in Liberty, North Carolina, and of First Baptist Church in Edmonton, Kentucky. He is an ordained Baptist minister.

Rev. Jerald M. Stinson is Senior Minister of the First Congregational Church in Long Beach, California.

Rev. Deborah Streeter is Associate Conference Minister of the Northern-California/Nevada Conference of the United Church of Christ.

Pastor Samuel Thomas, Jr. is Director of Transformation Broadcast Ministries in Huntsville, Alabama, and an ordained minister of the Seventh-day Adventist Church.

Rev. Charles White is an ordained Presbyterian minister, now serving as pastor to Weldon United Methodist Church in Weldon, California.

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States and North America. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and personal religious freedom. General Assemblies of the Association have repeatedly opposed religious observances, teachings, or indoctrination in public schools. Unlike the other amici, the Unitarian Universalist Association joins this brief as an organization.